

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
CLEVELAND DIVISION

UNITED STATES OF AMERICA,)	CRIMINAL NO.: 1:21-cr-226
)	
Plaintiff,)	
)	JUDGE PAMELA A. BARKER
vs.)	
)	
)	
DAVIS LU,)	
)	
Defendant.)	

**UNOPPOSED MOTION TO CONTINUE PRETRIAL
MOTION DEADLINE, FINAL PRETRIAL, AND JURY TRIAL**

AND NOW comes the Defendant, Davis Lu, by and through his counsel, Friedman & Nemecek, L.L.C., and hereby makes the within Motion to Continue and extend the relevant proceeding dates and, in support thereof, avers as follows:

1. A sealed Indictment was filed against the Defendant on April 1, 2021, alleging the following offense, *to wit*: one (1) count of Intentionally Damaging Protected Computer(s) in violation of 18 U.S.C. § 1030(1)(5)(A), (c)(4)(A)(i)(I), (c)(4)(A)(i)(VI), and (c)(4)(B)(i). (Doc. No. 1). The Defendant was arrested in Houston, Texas, on April 14, 2021, and appeared in court that same day. The Defendant was granted an appearance bond (Doc. No. 5-4) and ordered release subject to various terms and conditions. (Doc. No. 5-6).
2. The Defendant appeared with counsel for an arraignment hearing on May 4, 2021. At that time, the Defendant entered a plea of “Not Guilty” to the foregoing charge. The Court accepted the plea and ordered that the previously imposed bond conditions remain in effect.

3. Thereafter, the Court issued a Trial Order scheduling the matter for a final pretrial conference on July 8, 2021, and Jury Trial on July 12, 2021. (Doc. No. 11). The Order further provided that all pretrial Motions were due to be filed on or before June 24, 2021. (Doc. No. 11).
4. Defense counsel promptly served its discovery request on the Government. On or about May 12, 2021, Assistant United States Attorney Daniel Riedl (“AUSA Riedl”) provided counsel with the Government’s initial discovery response.
5. On or about May 28, 2021, the undersigned filed an Unopposed Motion to Continue Pretrial Motion Deadline, Final Pretrial and Jury Trial on the basis that additional time was needed to review the voluminous and complex discovery documents that were provided by the United States. Additionally, undersigned counsel averred that additional time was needed to retain an expert witness to assist with analyzing the forensic evidence and reviewing the relevant electronic device s in this case.
6. On or about June 1, 2021, this Honorable Court recognized the complexity of this case, the voluminous discovery, and the need for expert witnesses, and found that the ends of justice served by granting the continuance outweighed the best interest of the public and defendant in a speedy trial. Accordingly, this Honorable Court Ordered a continuance and set the Final Pretrial Conference for September 13, 2021, and the Jury Trial for September 29, 2021.
7. Since the commencement of the case, the undersigned has worked diligently to find a qualified expert witness with experience and training in the specific coding languages and software programs relevant to the instant matter. After being told by multiple agencies and professionals that a witness with the necessary experience would be difficult to find, undersigned counsel finally retained an expert on or about July 1, 2021.

8. Undersigned immediately met with this expert and provided him with all the relevant documents and information in their possession. Based upon his review of these materials, as well as several discussions with undersigned counsel and the Defendant, the expert witness identified a list of additional documents and materials that he needed to review in order to formulate an opinion in this case.
9. On or about August 12, 2021, undersigned counsel sent a letter to AUSA Riedl setting forth the specific additional items that the expert needed to review and analyze. AUSA Riedl indicated that he would be meeting with the corporation in the coming days to ascertain whether they had the requested items and, if so, the estimated time that it would take to deliver the same to the defense.
10. Upon receipt of the additional discovery items, the expert will need to conduct independent testing and/or analysis of the materials in order to formulate an opinion, generate an expert report and/or otherwise assist with preparing a defense to the charges herein at issue, including the filing of any pretrial Motions that may be warranted. The expert estimates that it will take approximately six (6) weeks to review and analyze the recently requested discovery materials and complete any independent testing that may be required. Assuming that the parties are unable to resolve the matter by way of a plea, the expert will also need to prepare a report, which will be disclosed to the Government in accordance with local rules as well as this Honorable Court's directives.
11. Counsel submits that a continuance of the final pretrial and trial dates is needed in order to complete its review the discovery materials and to prepare an effective defense to the allegations. Moreover, the undersigned's expert witness needs additional time to obtain, review and/or examine the relevant electronic evidence in this case, and to allow counsel sufficient time to

prepare any pretrial Motions that may be warranted.

12. Reviewing the evidence and consulting with an expert witness are essential to identifying any potential defenses to these allegations, including whether certain pretrial Motions pertaining to the forensic evidence are warranted and/or necessary. Because these tasks cannot be completed prior to the deadlines set forth in the Trial Order, the undersigned requests that the Court continue the pretrial Motion deadline as well as the final pretrial and trial hearings.
13. In light of the complexity of this case, the voluminous discovery materials and the need for further review and investigation, it is respectfully submitted that additional time is needed and that the ends of justice are served in granting this request. The Defendant thus acknowledges that the extension of time caused by this continuance constitutes excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161, *et. seq.* Furthermore, counsel submits that Defendant's right to due process of law and effective representation outweigh the best interest of the public and the Defendant to a speedy trial, 18 U.S.C. § 3161(h)(7)(A), since, for the reasons stated herein, the failure to grant such continuance would deny counsel for Defendant reasonable time necessary for effective preparation, taking into account the exercise of due diligence, 18 U.S.C. § 3161(h)(7)(B)(iv).
14. Counsel submits that the instant continuance is sought for the above-stated reasons and not for purposes of undue burden or delay. Moreover, the undersigned maintains that Defendant is not at fault in causing any delay. Since the arraignment, the undersigned has worked diligently in its representation of the Defendant. Counsel promptly served the Government with a request for discovery and has been reviewing the materials provided to date. Additionally, counsel promptly notified the Government of its request for additional documents and evidence and will continue to make all reasonable efforts to expedite this litigation.

15. The undersigned has discussed the instant request with AUSA Riedl, who indicated that the Government does not oppose a continuance of these proceedings.

WHEREFORE, the Defendant, Davis Lu, hereby respectfully requests that this Honorable Court continue the presently scheduled pretrial Motion deadline, final pretrial and trial dates so as to allow counsel and its agents the opportunity to obtain and adequately review the evidence and prepare a defense to the charges in this case, including filing any pretrial Motions that may be warranted.

Respectfully submitted,

DAVIS LU
By counsel

Dated: August 26, 2021

/s/ Eric Nemecek
ERIC C. NEMECEK (0083195)
IAN N. FRIEDMAN (0068630)
Counsel for Defendant
Friedman & Nemecek, L.L.C.
1360 East 9th Street, Suite 650
Cleveland, Ohio 44114
P: (216) 928-7700
F: (216) 820-4659
E: ecn@fanlegal.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was filed by CM/ECF on the 26th day of August, 2021, which will send a notification of such filing electronically to the following: Daniel Riedl, Assistant United States Attorney, 801 Superior Avenue, Cleveland, OH 44113.

Respectfully submitted,

/s/ Eric Nemecek

ERIC C. NEMECEK
IAN N. FRIEDMAN
Counsel for Defendant